

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

JOSE J. BASULTO
5790 S. W. 84th Street
Miami, FL 33143

Plaintiff,

v.

Case No. _____

THE REPUBLIC OF CUBA
c/o The Permanent Representative of
Cuba to the United Nations
14 East 79th Street
New York, N.Y. 10021

and

FIDEL CASTRO RUZ
c/o Presidential Palace
Havana, Cuba

and

GENERAL RAUL CASTRO RUZ
c/o Ministry of the Revolutionary Armed Forces
Havana, Cuba

Defendants.

COMPLAINT

Plaintiff, Jose J. Basulto, by counsel, for his complaint against Defendants The Republic of Cuba, Fidel Castro Ruz and General Raul Castro Ruz alleges as follows:

I. CAUSES OF ACTION.

1. Plaintiff brings this action for assault and intentional infliction of emotional distress seeking money damages and other relief, jointly and severally, against the Defendants.

2. This action arises out of an act of terrorism by the Defendants and their agents on February 24, 1996, in which two Cuban Air Force fighter planes ("MiGs"), intentionally shot down two unarmed, civilian planes of Hermanos al Rescate [or "Brothers To The Rescue" (BTTR) in English] in international airspace in an unprovoked aerial ambush, killing four BTTR aviators, while two other Cuban Air Force MiGs chased a third unarmed, civilian BTTR plane, piloted by Plaintiff Basulto, unsuccessfully attempting to shoot it down before it returned to Opa Locka airport in Florida.

3. The Antiterrorism and Effective Death Penalty Act enables suits for money damages against foreign states that cause "personal injury or death that was caused by an act of...extrajudicial killing, aircraft sabotage... or the provision of material support or resources (as defined in section 2339A of title 18) for such an act." *See* 28 U.S.C. §1605(a)(7). The Foreign Sovereign Immunities Act, as amended, provides liability for "money damages which may include economic damages, solatium, pain and suffering, and punitive damages if the acts were among those described in §1605(a)(7)." *See* also 28 U.S.C. § 1605, note. The statute of limitations to bring an action under the Antiterrorism and Effective Death Penalty Act is ten years. *See* 28 U.S.C. §1605(f).

II. PARTIES.

4. Plaintiff Jose J. Basulto ("Basulto") is a U. S. citizen residing at 5790 S. W. 84th Street, Miami, Florida. Mr. Basulto is the founder and President of BTTR, a humanitarian, pro-democracy organization founded under U.S. law with its main office in Miami, Florida.

5. Defendant The Republic of Cuba ("Cuba") is a foreign sovereign state located approximately 90 miles off the southeastern coast of the United States. The United States does not have formal diplomatic relations with the Fidel Castro government in Cuba, which can be contacted only c/o The Permanent Representative of Cuba to the United Nations, 14 East 79th Street, New York, N.Y. 10021.

6. Defendant Fidel Castro Ruz ("Fidel Castro") is the dictator of Cuba and is known as the "Lider Maximo" or "Jefe Supremo." Fidel Castro resides in Havana, Cuba.

7. Defendant Raul Castro Ruz ("Raul Castro") is the brother of Fidel Castro and the former Director of the Cuban Secret Services, Commander-in-Chief of the Cuban Air Force, President of the Ministry of the Cuban Revolutionary Armed Forces and Deputy Secretary of the Cuban Communist Party. Raul Castro resides in Havana, Cuba.

III. JURISDICTION AND VENUE.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1330(a) and 1332(a)(2).

9. Defendant Cuba is subject to suit in the courts of the United States pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.*, because its conduct falls within the exceptions to foreign sovereign immunity set forth in 28 U.S.C. §§ 1605(a)(5) and 1605(a)(7).

10. Although the acts of terrorism complained of herein occurred prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Congress expressly directed the retroactive application of 28 U.S.C. § 1605(a)(7) in order to further a comprehensive counterterrorism initiative by the legislative branch of the government, to wit: "The amendments made by this subtitle shall apply to any cause of action arising before, on or after the date of the enactment of this Act [April 24, 1996]."

11. On September 12, 1990, the Secretary of State of the United States designated Defendant Cuba as a state sponsor of terrorism pursuant to section 6(j) of the Export Administration Act of 1979. *See* 55 Fed. Reg. 37793-01. Defendants are known to collaborate with other terrorists and terrorist states, such as Yasser Arafat, Osama bin Laden and the Irish Republican Army, to name just a few.

12. The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(d) and 1391(f)(1).

IV. FACTUAL BACKGROUND.

14. Fidel Castro and his army seized power in Havana, Cuba on New Year's Day 1959. Since Fidel Castro established his repressive regime in 1959, Cuba has been a Communist nation in which every Cuban citizen is subjected to a totalitarian system of political and social control. Castro's regime systematically persecutes everyone who attempts to express opinions, organize meetings or form organizations the spirit of which is deemed to differ from or to be contrary to Cuban government policy. Cuban dissidents are killed, imprisoned, raped and/or tortured in a systematic manner.

15. The Castro regime has committed a lengthy litany of human rights abuses and has routinely victimized the Cuban people, particularly those Cubans who oppose Cuba's totalitarian government or attempt to escape it by fleeing Cuba to freedom.

16. Since 1959, more than 100,000 Cubans have been persecuted by the regime of Fidel Castro, 18,000 of whom were killed or disappeared. In 1965 in a public speech, Fidel Castro admitted that Cuba had 20,000 "political prisoners." The modus operandi of Defendants is barbaric, and Defendants Fidel and Raul Castro have killed and injured more innocent people than their comrade terrorists Yasser Arafat and Osama bin Laden combined.

17. According to a March 30, 2000 Amnesty International report, "Any person wishing to leave the country [Cuba], whether for a limited period of time or definitively, must obtain the Cuban authorities' permission as well as a visa for the country he/she plans to visit. Members of certain professions such as doctors, government representatives and former members of the armed forces are usually prohibited from emigrating. If it is a matter of known dissidents or former political prisoners, it may occur that even if they have obtained a visa, the authorities refuse to let them leave or delay their departure with no apparent cause....These measures of restriction have compelled many people to leave without authorization, generally by sea. Those who seek to emigrate or flee illegally are generally considered by the authorities as traitors of the Cuban revolution and, when they are caught, they may be indicted for illegal departures from the national territory, a crime punishable by up to three years in prison if there was no violence involved and up to eight years if there was use of force or intimidation."

18. Beginning in the early 1960's, Cuban citizens started leaving Cuba in significant numbers. Since that time, many Cubans have attempted to escape the repressive, barbaric regime of Fidel Castro by fleeing in small boats and makeshift rafts.

19. BTTR is a humanitarian, pro-democracy organization under U.S. law that advocates the non-violent establishment of a democracy in Cuba. BTTR volunteers fly

search and rescue missions for Cuban refugees. Since 1991, BTTR has saved the lives of over 4,200 Cubans seeking to cross the Florida Straits in search of freedom from Communist Cuba. BTTR has flown close to 2,000 missions over the area of the February 24, 1996 shoot-down.

20. In July 1991, BTTR aircraft encountered Cuban Air Force combat MiGs in international airspace, north of Cuba, for the first time. U.S. Air Force ("USAF") interceptors from Homestead Air Force Base were dispatched to protect the BTTR flight. Shortly after the incident, Ms. Mary Ann Zdunczyk, Assistant Manager for Plans and Procedures, Miami Flight Services Station, Federal Aviation Administration (FAA), Tamiami Airport convened a meeting to prevent a future incident or possible mishap. Plaintiff Basulto attended the meeting with representatives of the USAF, FAA, United States Customs Service, United States Coast Guard, U.S. Border Patrol, Federal Bureau of Investigation ("FBI"), Central Intelligence Agency ("CIA"), and others. Basulto and BTTR agreed voluntarily to participate in a new protocol, designed by the U.S. Government, that includes: (1) BTTR would file an international flight plan at least one hour in advance of departure for each aircraft crossing south of the 24th parallel; (2) each BTTR aircraft would be assigned a unique transponder code to identify the aircraft to any monitoring radar, including Cuban radar; (3) the flight plans would include the names of the pilots, the purpose of the flight, and the area and time of operations and would be forwarded to Cuban authorities; (4) BTTR aircraft would make a radio call to Havana Area Control Center ("Havana ACC") prior to crossing southbound of the 24th parallel to indicate BTTR's presence in international airspace under an active U.S. flight plan. BTTR has followed this protocol on each flight since July 1991 to the present, including the flights on February 24, 1996.

21. On December 19, 1992, a BTTR search and rescue flight was warned via radio by the FAA of impending danger and was requested to land at Key West. Upon

landing, BTTR learned that Fidel Castro's Cuban Air Force MiGs were operating in the BTTR search area.

22. On July 13, 1995, Plaintiff Basulto and one additional BTTR aircraft flew over Havana and dropped leaflets containing the text of the Articles of the United Nations Declaration of Human Rights and religious medals. The flight was a calculated diversion for Fidel Castro's Cuban Air Force fighters that were threatening a freedom flotilla commemorating the sinking of the civilian tugboat, *13 de Marzo*, by Cuban gunboats and the death of 40 persons aboard the civilian vessel.

23. On July 14, 1995, Fidel Castro's Cuban government publicly declared its intention to shoot down any Aintruder@ aircraft in its airspace. This policy of Cuba is in violation of the ARules of the Air, @ Annex 2 to the Convention on International Civil Aviation, July 1990, International Civil Aviation Organization ("ICAO").

24. By this time, Cuba had been listed by the U.S. Department of State as a state sponsor of terrorism. Cuba was listed in this category along with Iran, Iraq, Libya, North Korea, Sudan and Syria. Cuba actively receives international terrorists, pursues alliances with other terrorist states and is directly involved in terrorism and terrorist attacks, such as the February 24, 1996 shoot-down, out of which this action arises.

25. In January 1996, U.S. intelligence agencies obtained evidence that Fidel Castro's Cuban Air Force MiGs were test-firing air-to-air missiles and practicing maneuvers to attack slow moving aircraft similar to BTTR aircraft.

26. On January 9 and 13, 1996, BTTR planes dropped approximately half a million leaflets on Havana from outside of Cuban airspace B taking advantage of favorable weather and wind conditions. The leaflets contained the text of the various Articles of the United Nations Declaration of Human Rights.

27. Sometime during the period January 13-17, 1996, Fidel Castro expressly authorized and/or approved shooting down BTTR aircraft when he gave the commander of Cuban Air Defense and the commander of the Cuban Air Force express authority to personally decide when to intercept and shoot down BTTR planes.

28. On at least one occasion prior to the incident out of which this action arises, Fidel Castro warned U.S. authorities about the BTTR flights and wanted the U.S. to do something to stop them.

29. On February 24, 1996, BTTR submitted its flight plan and subsequently submitted an amended flight plan. Both flight plans were transmitted to the Havana ACC in accordance with the aforementioned flight notice and identification protocol. At approximately 1:01 PM EST, the three BTTR planes departed from Opa Locka airport in Miami, Florida. As the BTTR planes headed toward the 24th parallel, they were monitored by Cuban air defense and Cuban Air Force MiGs took-off from Cuba. In accordance with the established flight protocol, all three BTTR aircraft radioed Havana ACC and provided their transponder codes prior to crossing the 24th parallel. Shortly thereafter, Fidel Castro's Cuban Air Force MiGs fired air-to-air missiles at two of the BTTR planes, causing them to explode in the air, killing the four pilots in the planes and destroying the aircraft. At about the same time, two other Cuban MiGs pursued the third BTTR plane piloted by Plaintiff Basulto and chased him as he radioed Miami authorities to report the unlawful, unprovoked attack on the other two BTTR aircraft.

30. On February 23, 1996 -- the day before the unlawful and unprovoked attack on the BTTR aircraft and aviators took place -- Juan Pablo Roque, a double agent under Cuban Communist government control, returned to Cuba. Roque had infiltrated dissident Cuban groups exiled in Miami, had become a BTTR pilot and had supplied information to the Cuban government as well as the FBI. Roque was part of the Cuban

Intelligence Service's "Wasp Network" that was indicted on May 7, 1999 by prosecutors in the Southern District of Miami. Subsequently, on June 8, 2001, five members of Roque's espionage ring were convicted of 23 espionage-related charges. Espionage ringleader Gerardo Hernandez was found guilty of conspiracy to commit murder. These verdicts were the first legal determination that the four BTTR aviators were assassinated.

31. On February 27, 1996, the President of the United Nations Security Council condemned and deplored the unlawful attack and destruction of the BTTR's unarmed civilian aircraft by the Cuban Air Force.

32. On March 6, 1996, the United Nations requested the ICAO to investigate the unprovoked and unlawful attack and destruction of the BTTR planes. After conducting an investigation, the ICAO issued a final report that confirmed the BTTR planes were destroyed by missiles launched by Cuban MiGs outside of Cuba's territorial air space without forewarning and without ever making any radio contact or other measure short of interception.

33. On March 11, 1996, in an interview with Time magazine concerning the attack and destruction of the BTTR planes, Fidel Castro acknowledged his having master-minded the February 24, 1996 attacks on the BTTR aircraft, when he stated: "I take full responsibility for what took place." Fidel Castro identified Raul Castro and members of the Joint Chiefs of Staff as having participated in the decision to attack and destroy the BTTR planes.

34. On September 3, 1996, Fidel Castro again acknowledged his complicity in the February 24, 1996 terrorist murders of the BTTR aviators during an interview with Dan Rather, correspondent for CBS News, stating: "In reality, they [the Cuban MiGs] had the authority to do it [shoot down the BTTR planes], and I take full responsibility for it. I'm not trying to avoid responsibility because instructions were given at a moment of

considerable irritation. They were given to the pilots, I think, if I recall correctly, on January 14."

35. Despite these clear-cut terrorist acts against Plaintiff and the other BTTR aviators, the Clinton and Bush Administrations have taken no action against the Defendants, thereby necessitating this lawsuit.

COUNT I

(Assault – Defendants Cuba, Fidel Castro and Raul Castro)

36. Plaintiff realleges paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. During the February 24, 1996 Cuban Air Force MiGs' unlawful and unprovoked attack on the BTTR aircraft and aviators, Defendants willfully and intentionally placed Plaintiff Basulto in reasonable apprehension of physical injury.

38. In undertaking the unlawful and unprovoked attack on the BTTR aircraft and aviators on February 24, 1996, Fidel Castro's Cuban Air Force MiGs were acting under the orders of, at the direction of and in concert with Fidel Castro and Raul Castro.

39. As a direct and proximate result, Plaintiff Basulto suffered substantial damages including, but not limited to, physical and emotional distress, anxiety, fear and apprehension.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, for compensatory damages, punitive damages, pre- and post-judgment interest, attorneys' fees, costs, and such other relief as this Court deems just and proper.

COUNT II

(Intentional Infliction of Emotional Distress -
Defendants Cuba, Fidel Castro and Raul Castro)

40. Plaintiff realleges paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. The Defendants' actions, as described in the foregoing paragraphs, were intentional, extreme, outrageous and intolerable.

42. The Defendants' actions, described in the foregoing paragraphs, were undertaken with the intent to injure, murder and/or maliciously cause severe emotional trauma and distress to the BTTR aviators, including Plaintiff Basulto, on February 24, 1996 and/or with reckless disregard of the rights of Plaintiff and of the severe emotional distress that Plaintiff would suffer.

43. In undertaking the unlawful and unprovoked attack on the BTTR aircraft and aviators on February 24, 1996, Fidel Castro's Cuban Air Force MiGs were acting under the orders of, at the direction of and in concert with Fidel Castro and Raul Castro.

44. The Defendants' conduct was the sole proximate cause of the severe and continuing emotional distress that has been suffered by Plaintiff Basulto arising out of the February 24, 1996 attack by Fidel Castro's Cuban Air Force MiGs on the BTTR aircraft and aviators. As a direct and proximate result of the intentional, reckless, outrageous and intolerable conduct of the Defendants, Plaintiff has suffered substantial damages including, but not limited to, severe emotional distress, mental anguish, intense fear and anxiety, among other things.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendants, jointly and severally, for compensatory damages, punitive damages, pre- and post-judgment interest, attorneys' fees, costs and such other relief as this Court deems just and proper.

COUNT III

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(Anti-Terrorism and Effective Death Penalty Act Claim,
28 U.S.C. § 1605(a)(7) – Defendant Cuba)
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45. Plaintiff realleges paragraphs 1 through 44 as if fully set forth herein.

46. The acts of extrajudicial killing and aircraft sabotage were perpetrated by agents of Defendants Fidel Castro and Raul Castro, who received material support and resources from Defendant Cuba.

47. Agents, officials and/or employees of Defendant Cuba provided material support and resources to Defendants Fidel Castro and Raul Castro while acting in the scope of their offices, agencies or employment. Similar conduct, if committed by agents, officials or employees of the United States, would be actionable.

48. Defendant Cuba had been designated by the U.S. Government as a state sponsor of terrorism at the time of the February 24, 1996 attack on the BTTR aircraft and aviators.

WHEREFORE, Plaintiff demands judgment be entered in his favor and against Defendant Cuba for an amount in excess of Forty Million Dollars (\$40,000,000.00), plus

interest, costs, punitive damages, attorneys' fees and such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of any and all issues herein triable of right by a jury.

DATED this 20th day of May, 2002.

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